

**United States House of Representatives**  
**BEFORE THE COMMITTEE ON ENERGY AND COMMERCE**  
**AND SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET**

**THURSDAY, MAY 26, 2005**

***Legislative Hearing on Staff Discussion Draft of the DTV Transition  
Act of 2005***

**TESTIMONY OF PATRICK KNORR**

*GENERAL MANAGER – SUNFLOWER BROADBAND  
LAWRENCE, KANSAS*

*VICE CHAIRMAN – AMERICAN CABLE ASSOCIATION  
PITTSBURGH, PENNSYLVANIA*

**INTRODUCTION**

Thank you, Mr. Chairman and members of the subcommittee.

My name is Patrick Knorr, and I am General Manager of Sunflower Broadband, an independent cable business based in Lawrence, Kansas, currently serving 35,000 customers. My company provides cable television, digital cable, high-speed internet, local phone service, digital video recorders and other advanced services in eight smaller systems and rural areas throughout Northeast Kansas.

I am also the vice chairman of the American Cable Association. ACA represents nearly 1,100 smaller and medium-sized independent cable businesses. These companies do one thing – serve our customers, who are found in areas the bigger entities don't serve. ACA members don't own programming or content; nor are they run by the large media companies. Collectively, ACA members serve nearly 8 million customers, mostly in smaller markets. Our members serve customers in every state and in nearly every congressional district, particularly those of this Committee.

I believe you stand at an historic moment, when we shift from the 1970s-era policies of the analog world to the exciting and enticing future that the digital revolution can provide. All of us here today want our constituents and customers to receive the best in advanced, high-speed, digital services. The DTV Transition Act takes an important step in the right direction. But at the same time, all of us here today want to ensure that no one is left behind as we actually move from analog to digital.

As we look today at specific legislative proposals concerning the transition to digital television, there are two realities this Committee must take into account.

The first reality is that the transition to digital television is both a question of technology and of public policy – a reality recognized by the existence of this hearing and the very necessity of a DTV bill. Many very important and relevant public policy issues exist today concerning the digital pipe and the content that flows through it. Issues such as “rising cable and satellite rates,” “media consolidation,” “indecentcy,” “retransmission consent abuse,” “family programming tiers” and the “Digital Divide,” cannot be viewed as separate from the DTV transition. In fact, these policy issues are the central focus of your constituents and our customers. Moving a limited DTV bill will only postpone and exacerbate marketplace, media, programming, and pricing problems that already exist back home in your districts. The transition from analog to digital, and the underlying need for legislation to facilitate that shift, provides you with the first appropriate opportunity to address these germane issues in a comprehensive manner and I encourage you to take advantage of this moment.

Digital platforms can provide consumers with a wondrous world of new and valuable programming. But if you allow the old rules to stay in place, it will just be more of the same. To move forward on just one technological aspect of the digital revolution without moving forward on the broader issues would be the equivalent of putting a fancy new engine in a rusty old car, thus severely limiting how far and how fast you can really go. To provide consumers with the greatest benefit, it is imperative that you break with the past and recognize that some old ideas no longer serve the greater good.

I strongly urge this Committee to seize this moment to restore the balance of power between programmers, operators, media consortiums and broadcasters. In short, it's time to recalibrate for the digital world so that each is subject to the creative power of competitive market forces and to the consumers they serve.

Moving on to the second reality, provisions in the DTV Transition Act that require dual carriage of broadcast signals will threaten ACA's members very survival and ability to provide advanced services such as high-speed internet, VOIP, and VOD. Unless the specific financial realities of smaller, independent providers are addressed in this bill, consumers and communities across America will lose access to signals and services they rely on today. In fact, what worries me is that without efforts to help these systems make the transition, many of the small businesses that provide video and broadband services in rural America will cease to exist and the digital divide will actually grow.

Out in the smaller communities ACA members serve from Illinois to Nebraska to Oregon to Mississippi, it is our core video business that allows us to finance and provide

the high-speed services, including digital television, which everyone wants in order to bridge the Digital Divide. It is independent cable companies like mine that provide broadband services to small towns throughout the country. Satellite providers, telephone giants or major cable companies – unlike ACA's members – are not rushing to serve these communities and I can appreciate why. Large companies will never come rushing into these communities because of the cost and difficulty of providing service in rural America. The headlines you read about in the media are about new services and suites of services offered to larger communities. If ACA members' video service cannot survive, I can assure you we will not be around to offer the cable modem services these communities need and the DTV services this Committee wants. In short, video programming is not "just" about programming choices and rates, but it is also the foundation upon which advanced services, including DTV, are built.

As a result, there are four fundamental and specific changes that must be made if your goal is to provide the greatest diversity of video, DTV and advanced services and to ensure that all consumers – even in smaller markets and rural areas – have access to them.

The four changes are:

- 1. Ensure that consumers in smaller markets and rural areas are not left behind in the digital transition. Take into account and address the unique financial, technical and operational requirements of those companies that will be providing DTV service in rural America.**

- 2. Update and change the current retransmission consent rules to help remedy the imbalance of power caused by media consolidation.**
- 3. Correct rules that allow for abusive behavior because of media consolidation and control of content.**
- 4. Make access to quality local-into-local television signals available.**

**What needs to be changed and why:**

- 1. Ensure that consumers in smaller markets and rural areas are not left behind in the digital transition. Take into account and address the unique financial, technical and operational requirements of those companies that will be providing DTV service in rural America.**

**What the DTV Transition Act would require:**

Section 6 of The DTV Transition Act Staff Draft would require cable operators to carry the primary digital signal of all broadcast stations, but gives the cable operator the choice to also simultaneously downconvert certain commercial and educational stations to analog and carry both digital and analog signals all on the broadcast basic tier. From the perspective of the independent cable operators serving rural America today, this is a Hobson's Choice – no choice at all – for the following reasons:

**Dual Carriage.** Independent cable operators in smaller markets and rural areas cannot afford the transition and equipment costs to transmit solely digital signals. They will need to downconvert digital signals to analog so that their subscribers in smaller

markets and rural America will have a signal to receive. If dual carriage is the only option, most small systems will be unable to comply due to the fact that the limitations of their systems will prevent them from carrying those signals (as the actual carrying capacity of the pipe into the home will be too small). In addition, the cost of just carrying the digital signal for most ACA members would be over \$1,000 per subscriber. That's a cost that many operators cannot recover nor absorb. Additionally, such a solution would force every customer in my market to have a HD tuner for every TV in the house. In short, the requirement in the Staff Draft for dual carriage of both the digital and analog signal will impose significant additional unrecoverable cost and siphon off precious bandwidth used today to offer advanced communications services like high-speed Internet, VOIP and VOD, to name a few.

**Hard Deadline.** The DTV transition Act imposes a hard deadline of December 31, 2008 when all analog transmission by broadcast stations must cease. The "hard deadline" for the digital transition will impact disproportionately ACA members in rural America and their subscribers in at least two ways:

- Some ACA members in remote areas are subject to the "digital cliff" effect. When broadcasters turn off their analog signal these members will be unable to pick up any signal to retransmit to their subscribers due to the technical characteristics of the digital signal. If a cable operator cannot pick up the digital signal, its subscribers are even less likely to be able to pick up the signal off-air signal with a home antenna.

- Cable subscribers in rural areas are less able to afford digital receivers or converters than subscribers in urban areas.

**Retransmission consent.** As previously discussed, some broadcasters are already using their DTV signal as a lever to impose more tying demands and higher fees for retransmission consent on cable operators. When a broadcaster prevents a smaller operator from carrying broadcast DTV stations by requiring the operator to carry unspecified multicast or tied programming, or by demanding exorbitant fees, this behavior slows the DTV transition. The bill must address these problems to ensure the increased bandwidth available in the digital world will not just become increased opportunity for more unwanted programming and higher rates to be leveraged down to consumers in rural America.

**Digital-to-analog conversion.** ACA members support the concept of allowing the digital-to-analog conversion that this committee has considered. Such a decision would allow smaller systems to minimize the disruption to their consumers and would ensure our continued viability. Unfortunately, the current provisions in Section 6 of the staff draft are not a practical option. First, it will again require consumers to purchase new equipment. Second, it places an insurmountable economic burden on operators by forcing them to replace their networks. (See Exhibit 3) The simplest solution would be to give operators the flexibility to downconvert digital signals at the head-end without the dual carry obligation.

The stark reality is that ACA members, without changes to the draft that reflects their unique circumstances, face extinction. This means that consumers served by ACA

members in most of the districts represented on this Committee will lose their provider and all of the advanced services these companies provide.

Some may say that the loss in the marketplace of certain providers like ACA members is simply a function of survival of the fittest. We would argue that rural America deserves competition in the video marketplace just like the rest of the country. They also deserve to experience the advanced services that bigger entities are rushing to provide in more populated and profitable areas. The reality is that in the rural markets ACA members companies serve and operate, larger cable television providers will not fill in the service gaps if ACA members are forced to exit their business.

**Solutions to ensure no consumer, community or provider are left behind in the DTV transition:**

- Provide the ability to downconvert digital signals to analog without the obligation for dual carriage;
- Assist independent cable operators to upgrade facilities to avoid the digital cliff effect and to be able to receive and transmit DTV signals to their consumers;
- Allow waivers of the carry-one-carry-all requirement to ease the burden on smaller operators;
- Make adjustments to retransmission consent rules and exclusivity regulations.

ACA and its members understand and support the need for the Committee to move swiftly to recapture analog spectrum for other noble purposes. However, we strongly caution the Committee to compare the pursuit of such purposes with the potential of

leaving consumers and providers in smaller markets and rural America out in the cold with no choices, no signals and lost services. We hope to work with the Committee to develop a DTV transition bill that will recognize the unique circumstances faced by providers and consumers in smaller markets and rural areas so that the DTV transition will take place in positive ways for all consumers, not just those located in populated areas.

**2. Current retransmission consent rules must be updated to help remedy the imbalance of power caused by media consolidation**

- **The current retransmission consent and broadcast exclusivity laws and regulations limit consumer choice and impede independent cable operators' ability to compete in smaller markets and rural America by permitting distant media conglomerates to charge monopoly prices for programming. This situation must not be carried forward into the post-DTV world.**

The current laws and regulations allow broadcasters to combine retransmission consent and market exclusivity into a monopolistic hammer. Both of these rules were created to preserve local broadcasting, but now large media companies use those rules to hold localism hostage to increase profits and gain wide distribution for niche programming like SoapNet and more recently LOGO, a gay-themed Viacom Network. These same practices that were used with analog broadcasting are already being applied to the digital world, accelerating the problem.

Across America our association is seeing early signs that broadcasters are using this leverage to lean excessively on independent cable operators to extract cash. Individually the independent cable systems that are our members usually represent less than a fraction of 1% of any given DMA and have no leverage in negotiations with broadcasters. However, collectively our ACA members serve 8% of all television households and most of rural America. We estimate that this year broadcasters will leverage retransmission consent rules to extract an additional \$1 billion from consumers served by ACA members for the "privilege" to receive free over-the-air signals. The average increase in basic cable rates as a result could well be \$2-\$5 per subscriber per month! Remember, for the consumer, they will not experience any improvement in service nor receive any new programming in spite of paying this increase.

And broadcasters don't only demand cash for the right to carry their local television stations. Some members of the largest media conglomerates even require our cable companies to carry affiliated satellite programming in local systems and even in systems outside of the member's local broadcast market. In this way, ownership of a broadcast license is used to force carriage of, and payment for, affiliated programming by consumers who do not even receive the broadcast signal at issue. These forced carriage requirements are also responsible for forcing on some of the most objectionable and indecent content on television today, such as SpikeTV, F/X and Soap Net, among many others.

Unless this Committee addresses these issues, imposed broadcaster cost, price increases and forced content will continue unabated in the digital world. In fact,

increased bandwidth will only add fuel to this fire. Large media companies are using the free spectrum licenses granted by the government for local broadcasting to pad margins and to leverage often questionable nationally delivered content. How those licenses are used is fundamentally part of Congress's obligation in managing the transition of licenses from analog to digital. Congress created the retransmission consent laws in 1992 to protect localism and must change them in 2005 to protect it from the unforeseen consequences of media consolidation in a new digital world.

Broadcasters and programmers get away with these abuses today because the pricing of retransmission consent does not occur in a competitive market. Under the current regulatory scheme, media conglomerates and major affiliate groups are free to demand monopoly "prices" for retransmission consent while blocking access to readily available lower cost substitutes.

They do so by two methods:

- First, the network non-duplication and syndicated exclusivity laws and regulations allow broadcasters to block cable operators from cable-casting network and syndicated programming carried by stations outside of the broadcaster's protected zone. In other words, the conglomerate-owned station makes itself the only game in town and can charge the cable operator a monopoly "price" for its must-have network programming. The cable operator needs this programming to compete. So your constituents end up paying monopoly prices.

- Second, the media conglomerates require network affiliates to sign contracts that prevent the affiliate from selling their programming to a cable operator in a different market. Again, the conglomerate-owned and operated stations are the only game in town.

In these situations, the cable companies' only defense is to refuse to carry the programming. This has virtually no effect on the media conglomerates, but it prevents your constituents from receiving must-have network programming and local news. This result directly conflicts with the historic goals and intent of the retransmission consent and broadcast exclusivity rules, which were to promote consumer choice and localism.

There are ready solutions to this dilemma. When a broadcaster seeks a "price" for retransmission consent, give independent, smaller and medium-sized cable companies the ability to shop for lower cost network programming for their customers.

Accordingly, in our March 2, 2005, Petition for Rulemaking to the FCC, ACA proposed the following adjustments to the FCC's retransmission consent and broadcast exclusivity regulations:

- One: Maintain broadcast exclusivity for stations that elect must-carry or that do not seek additional consideration for retransmission consent. This ensures must-carry remains the primary option for programmers and ensures "localism."
- Two: Eliminate exclusivity when a broadcaster elects retransmission consent and seeks additional consideration for carriage. If the programmer decides to forego their must-carry rights in the hopes of

putting together a business deal with an operator, allow the operator to negotiate freely without having their hands tied.

- Three: Prohibit any party, including a network, from preventing a broadcast station from granting retransmission consent.

On March 17, 2005, the FCC released ACA's petition for comments. By opening ACA's petition for public comment, the FCC has acknowledged that the current retransmission consent and broadcast exclusivity scheme requires further scrutiny. Before codifying a new regulatory regime for digital television, carrying all the baggage from the analog world with it, Congress should ask similar questions and make the important decision to update current law to rebalance the role of programmers and providers.

Congress, too, should revisit the retransmission consent laws to correct the imbalance caused by the substantial media ownership concentration that has taken place since 1992. One solution is to codify the retransmission consent conditions imposed on Fox/News Corp./DirecTV to apply across the retransmission consent process. The three key components of those conditions include: (i) a streamlined arbitration process; (ii) the ability to carry a signal pending dispute resolution; and (iii) special conditions for smaller cable companies.

In summary, the retransmission consent and broadcast exclusivity regulations have been used by the networks and stations to raise rates and to force unwanted programming onto consumers. This must stop, but it won't unless Congress acts. If a

station wants to be carried, it can elect must-carry. If a station wants to charge for retransmission consent, let a true competitive marketplace establish the price.

**3. Correct rules that allow for abusive behavior because of media consolidation and control of content.**

What most consumers do not understand is that my independent company and ACA member companies must purchase most of their programming wholesale from just four media conglomerates, referred to here as the "Big Four" – Disney/ABC, Viacom/CBS, News Corp./DirecTV/Fox, and General Electric/NBC. All of these companies have at their core one of the top four national broadcast networks. In dealing with the Big Four, all ACA members continually face contractual restrictions that eliminate local cable companies' flexibility to package and distribute programming the way our customers would like it. Instead, programming cartels, headquartered thousands of miles away, decide what they think is "valuable" content and what our customers and local communities see. On a basic level the digital transition is a fundamental paradigm shift that could be very disruptive for consumers. Addressing these abuses is an opportunity for congress to (1) provide tangible benefits to consumers; (2) fulfill the true promise of the digital transition by providing more choice and control to consumers; and, (3) to make a consolidated media more accountable to people they serve.

To fix this situation, Congress must update and reform the rules so that:

- a. **Local providers of all forms and customers have more choice and flexibility** in how programming channels are priced and packaged, including the ability to sell programming channels on a theme-based tier if necessary;
- b. **Tying through retransmission consent must end.** Today, the media giants hold local broadcast signals hostage with monopolistic cash-for-carriage demands or demands for carriage of affiliated media-giant programming, which was never the intention of Congress when granting this power;
- c. **The programming pricing gap between the biggest and smallest providers is closed** to ensure that customers and local providers in smaller markets are not subsidizing large companies and subscribers in urban America; and,
- d. **The programming media giants must disclose, at least to Congress and the FCC, what they are charging local providers,** ending the strict confidentiality and non-disclosure dictated by the media giants. Confidentiality and non-disclosure mean lack of accountability of the media giants.

Let me explain.

➤ **Forced Cost and Channels**

For nearly all of the 50 most distributed channels (see Exhibit 1), the Big Four contractually obligate my company and all ACA members to distribute the programming to all basic or expanded basic customers regardless of whether we think that makes sense for our community. These same contracts also mandate carriage of less desirable channels in exchange for the rights to distribute desirable programming.

A small cable company that violated these carriage requirements would be subject to legal action by the media conglomerates, and for ACA's members, this is a very real threat.

These carriage restrictions prohibit ACA members from offering more customized channel offerings that may reflect the interests and values of our specific community. Thus, any interest we may have in offering a family tier as the basic tier to our constituencies is made virtually impossible due to the corporate decisions made by the Big 4 and the terms and conditions they impose on our companies.

➤ **More Forced Cost and Channels Through Retransmission Consent**

As previously discussed, retransmission consent has morphed from its original intent to provide another means to impose additional cost and channel carriage obligations. As a result, nearly all customers have to purchase basic or expanded basic packages filled with channels owned by the Big Four (See Exhibit 2).

➤ **Forced Carriage Eliminates Diverse Programming Channels.**

The programming practices of certain Big Four members have also restricted the ability of some ACA members to launch and continue to carry independent, niche, minority, religious and ethnic programming. The main problem: requirements to carry Big Four affiliated programming on expanded basic eliminate "shelf space" where the cable provider could offer independent programming.

If new independent programmers are to provide outlets for this type of programming to reach consumers, you must ensure that they are not subject to the handcuffs current programming practices place upon them.

➤ **Local Flexibility is Needed.**

In order to give consumers more flexibility and better value, changes in current wholesale programming practices and market conditions are needed for all providers. Operators must be given more flexibility to tailor channel offerings that work best in their own local marketplaces.

As I have stated, the Big Four condition access to popular programming on a range of distribution obligations and additional carriage requirements. These restrictions and obligations eliminate flexibility to offer more customized channel packages in local markets.

It's important to point out that neither my company nor any ACA member controls the content that's on today's programming channels. That content – decent or not – is controlled by the media conglomerates that contractually and legally prevent us from changing or preempting any questionable or indecent content.

However, if my company and other ACA members had more flexibility to package these channels with the involvement of our customers, current indecency concerns raised by both Congress and the FCC could also be addressed.

➤ **Price discrimination against smaller cable companies makes matters worse.**

The wholesale price differentials between what a smaller cable company pays in rural America compared to larger providers in urban America have little to do with differences in cost, and much to do with disparities in market power. These differences are not economically cost-justified and could easily be replicated in the IP world as smaller entrants are treated to the same treatment our members face.

Price discrimination against independent, smaller and medium-sized cable companies and their customers is clearly anti-competitive conduct on the part of the Big Four – they offer a lower price to one competitor and force another other competitor to pay a 30-55% higher price FOR THE SAME PROGRAMMING. In this way, smaller cable systems and their customers actually subsidize the programming costs of larger urban distributors and consumers. This sad reality should not carryover with the digital transition.

In order to give consumers in smaller markets and rural areas more choice and better value, media conglomerates must be required to eliminate non-cost-based price discrimination against independent, smaller and medium-sized cable operators and customers in rural America.

With less wholesale price discrimination, ACA members could offer their customers better value and stop subsidizing programming costs of large distributors.

➤ **Basis For Legislative and Regulatory Action**

Congress has the legal and constitutional foundation to impose content neutral regulation on wholesale programming transactions. The program access laws provide the model and the vehicle, and those laws have withstood First Amendment scrutiny. This hearing provides the Committee with a key opportunity to help determine the important governmental interests that are being harmed by current programming practices.

Furthermore, based in large part on the FCC's actions in the DirecTV-News Corp. merger, there is precedent for Congress and the FCC to address the legal and policy

concerns raised by the current programming and retransmission consent practices of the media conglomerates. The FCC's analysis and conclusions in the News Corp. Order persuasively establish the market power wielded by owners of "must have" satellite programming and broadcast channels and how that market power can be used to harm consumers. That analysis applies with equal force to other media conglomerates besides News Corp.

➤ **Pierce the Programming Veil of Secrecy – End Non-Disclosure and Confidentiality.**

Most programming contracts are subject to strict confidentiality and nondisclosure obligations, and my company and ACA members are very concerned about legal retaliation by certain Big Four programmers for violating this confidentiality. Ask me what I have to pay to receive a given channel and I cannot tell you due to terms and conditions the conglomerates insist upon. Why does this confidentiality and non-disclosure exist? Who does it benefit? Consumers, Congress, the FCC? I don't think so. Why is this information so secret when much of the infrastructure the media giants benefit from derives from licenses and frequencies granted by the government?

Congress should obtain specific programming contracts and rate information directly from the programmers, either by agreement or under the Committee's subpoena power. That information should then be compiled, at a minimum, to develop a Programming Pricing Index (PPI). The PPI would be a simple yet effective way to gauge how programming rates rise or fall while still protecting the rates, terms, and conditions of the individual contract. By authorizing the FCC to collect this information

in a manner that protects the unique details of individual agreements, I cannot see who could object.

Armed with this information, Congress and the FCC would finally be able to gauge whether rising cable rates are due to rising programming prices as we have claimed or whether cable operators have simply used that argument as a ruse. A PPI would finally help everyone get to the bottom of the problems behind higher cable and satellite rates. We at ACA are so convinced that this type of information will aid you in your deliberations that we challenge our colleagues in the programming marketplace to work with us and this Committee to craft a process for the collection of that data.

In short, without disclosure, there is no accountability. The digital transition is about how to manage broadcasting in America and is an opportunity to make things fundamentally better for consumers.

#### **4. Make Access To Quality Local-Into-Local Television Signals Available.**

In the previous section, I outlined the enormous technical, financial and operational challenges facing independent cable in smaller markets and rural areas to accomplish the DTV transition. While we are committed to making the transition work, it will be no small feat to make this transition happen in ACA members' marketplaces without putting the many advanced services we now provide at great risk.

Another important reality about digital signals is that they will not likely have the same distribution range as the analog signals they replace. One way to help solve this

problem is to grant cable access to local-into-local television signals already being delivered by direct broadcast satellite (DBS) companies.

The digital spectrum assigned will not have the same propagation qualities as many of the analog signals they replace. As a result, while most metropolitan cable operators and DBS will have access to improved digital signals, some rural cable operators will find they no longer can receive any usable signal at all. This is what referred to as the digital cliff. In local-into-local markets, DBS can deliver clear local broadcast signals regardless of distance from transmitters. ACA members and their buying representative, the National Cable Television Cooperative in Lenexa, Kansas, have asked both DirecTV and EchoStar for the right to buy and pay for access to DBS' local-into-local signals where a good quality signal is not available over-the-air. However, the DBS duopoly refuses to allow rural cable systems to receive these DBS-delivered broadcast signals, even though DBS now sells the same signals to private cable operators, satellite master antenna system owners, and several Bell companies.

Ironically, DBS now refuses to grant access to its programming, despite the favored regulatory treatment it received to have access to cable programming. The ability to receive local broadcast signals was the reason Congress enacted the Satellite Home Viewer Improvement Act in 1999, which Congress recently reauthorized through SHVERA. But SHVERA does nothing to solve the local signal problem for rural cable operators and customers.

Congress can solve this problem by revising the retransmission consent laws as follows:

In markets where a satellite carrier delivers local-into-local signals, that satellite carrier shall make those signals available to MVPDs of all types on nondiscriminatory prices, terms and conditions where the MVPD has the consent of the broadcaster to retransmit the signal.

ACA's recommended revisions to the laws and regulations governing retransmission transmission consent and broadcast exclusivity are modest. But they will advance the widespread dissemination of good quality local broadcast signals to your constituents and will address the serious competitive imbalance currently hurting small market and rural cable systems. Carrying this restrictive situation into the DTV world would further compound this mistake. All video vendors must be able to have access to quality signals if they are going to be viable competitors within in the DTV marketplace.

## **CONCLUSION**

This Committee stands today at the threshold of the new digital world, but it is also a precipice. The challenges are many and the risks are great.

This legislation provides you with the power to determine whether to recognize that rural America and its service providers have unique financial and geographic challenges to face while making this conversation. Additionally, at the same time, you have the opportunity to repudiate outdated regulatory structures that raise rates and force programming on your constituents while replacing it by injecting market-based solutions. I hope you will be able to address both halves to this problem and appreciate the opportunity to testify on ACA's views on these matters.

## **Biography of Patrick Knorr**

Director of Strategic Planning for The World Company & General Manager for Sunflower Broadband; Lawrence, Kansas

Patrick Knorr has been with Sunflower Broadband for seven years. Before being named to the position of General Manager in 2000, he held senior management positions in several early Internet companies going back to 1994, but ultimately was drawn to the potential of broadband over cable in 1998. At that time, he became Internet Manager for Sunflower and helped lay the foundation for making Sunflower one of the most successful cable modem deployments in the country, in part by being one of the first companies to deploy DOCSIS modems. Currently, more than a third of all residents in Lawrence use Sunflower's Internet service.

In 2001, under Knorr's guidance, Sunflower became one of the smallest cable systems to deploy switched telephone service – a service that became profitable in 2003. Sunflower became one of the smallest systems to launch high-definition television in 2003 and was also honored that year by CableWORLD Magazine as Cable System of the Year. Recently Sunflower has deployed VOD and digital simulcast to help improve its services in a competitive market.

In 2004 Knorr was elected Vice Chairman of the American Cable Association, the leading trade group representing independent cable interests. He feels the high-capacity bandwidth that broadband cable can bring to homes is the key to a revolution that will change the way people are entertained, shop, communicate, and fundamentally, the way they live. Knorr's early roots go back to Virginia Beach, Va., but he has spent most of his adult life in Kansas. He is a graduate of Kansas State University and holds a Bachelor of Science Degree in Social Science.

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**EXHIBIT 1 – Ownership of the Top 50 Programming Channels**

<b>Channel</b>	<b>Ownership</b>	<b>Channel</b>	<b>Ownership</b>
BET	Viacom / CBS	Animal Planet	Liberty Media
CMT	Viacom / CBS	Discovery	Liberty Media
MTV	Viacom / CBS	Travel	Liberty Media
Nickelodeon	Viacom / CBS	TLC	Liberty Media
Spike	Viacom / CBS	Golf	Comcast Corp.
TV Land	Viacom / CBS	Outdoor Life	Comcast Corp.
VH1	Viacom / CBS	E!	Comcast Corp.
Comedy Central	Viacom / CBS	QVC	Comcast Corp.
ABC Family	Walt Disney Co. / ABC	HGTV	Scripps Company
Disney	Walt Disney Co. / ABC	Food	Scripps Company
ESPN	Walt Disney Co. / ABC	AMC	Rainbow / Cablevision Systems
ESPN2	Walt Disney Co. / ABC	C-Span	National Cable Satellite Corp.
Lifetime	Walt Disney Co./Hearst	C-Span II	National Cable Satellite Corp.
A&E	Hearst/ABC/NBC	WGN	Tribune Company
History	Hearst/ABC/NBC	Hallmark	Crown Media Holdings
CNBC	GE/NBC	Weather	Landmark Communications
MSNBC	GE/NBC	HSN	IAC/InterActiveCorp.
Sci-fi	GE/NBC		
USA	GE/NBC		
Bravo	GE/NBC		
Shop NBC	GE/NBC		
Fox News	News Corp.		
Fox Sports	News Corp.		
FX	News Corp.		
Speed	News Corp.		
TV Guide	News Corp.		
CNN	Time Warner / Turner		
Headline News	Time Warner / Turner		
TBS	Time Warner / Turner		
TCM	Time Warner / Turner		
TNT	Time Warner / Turner		
TOON	Time Warner / Turner		
Court TV	Time Warner / Liberty Group		

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**EXHIBIT 2 – Channels Carried Through Retransmission Consent**

<b>Program Service</b>	<b>Ownership</b>
FX	News Corp.
Fox News	News Corp.
Speed	News Corp.
National Geographic	News Corp.
Fox Movie Network	News Corp.
Fox Sports World	News Corp.
Fuel	News Corp.
ESPN2	Walt Disney Co. / ABC
ESPN Classic	Walt Disney Co. / ABC
ESPNNews	Walt Disney Co. / ABC
Disney from premium to basic	Walt Disney Co. / ABC
Toon Disney	Walt Disney Co. / ABC
SoapNet	Walt Disney Co. / ABC
Lifetime Movie Network	Walt Disney Co. / Hearst
Lifetime Real Women	Walt Disney Co. / Hearst
MSNBC	GE / NBC
CNBC	GE / NBC
Shop NBC	GE / NBC
Olympic Surcharges for MSNBC/CNBC	GE / NBC
Comedy Central	Viacom / CBS
MTV Espanol	Viacom / CBS
MTV Hits	Viacom / CBS
MTV2	Viacom / CBS
Nick GAS	Viacom / CBS
Nicktoons	Viacom / CBS
Noggin	Viacom / CBS
VH1 Classic	Viacom / CBS
VH1 Country	Viacom / CBS
LOGO	Viacom/CBS

Comparing this with the Top Fifty Channels in Exhibit 1 demonstrates how certain members of the Big Five have used retransmission consent to gain a significant portion of analog and digital channel capacity.

**United States House of Representatives**  
**BEFORE THE COMMITTEE ON ENERGY AND COMMERCE AND SUBCOMMITTEE ON**  
**TELECOMMUNICATIONS AND THE INTERNET**  
**THURSDAY, MAY 26, 2005**

***Legislative Hearing on Staff Discussion Draft of the DTV Transition Act of 2005***

**TESTIMONY OF PATRICK KNORR**

**Sunflower Broadband/American Cable Association**

**EXHIBIT 3 – Expected Cost of the Digital Transition**

	<u>Upgrading headends to receive and transmit digital signals</u>	<u>Upgrading headends to downconvert signals to analog</u>
Cost per headend	\$9,000	\$4,500
Cost per set-top box	\$400	
Cost per subscriber	\$5,000	

**PER-COMPANY COSTS TO UPGRADE FACILITIES  
TO RECEIVE AND TRANSMIT DIGITAL SIGNALS**

**COMPANY #1**

Number of current non-digital subscribers: 360,000

	<u>Avg. 1 TV per household</u>	<u>Avg. 2 TVs per household</u>
Total capital outlay for 2006 - 2008	\$87,300,000	\$135,540,000
Percent of annual capital budget	49.32%	76.58%

**COMPANY #2**

Total subscribers: 50,679.

Cost per encrypted HD channel: \$4,587 - \$6,407

**COMPANY #3**

Total subscribers: 35,000

Total capital outlay for  
2006 – 2008:                      \$85,000,000 – \$135,000,000